

2 where n, on a number average basis, ranges from 2 to 20, and R and R' are ethyl and ethylene, respectively.

#### REMARKS

Removal of the finality of the rejection is requested in view of the radically different basis for the Section 103 grounds of rejection herein despite the fact that the applicants previously amended Claims 1 and 3 and added new Claims 9-14. The undersigned has not previously had an opportunity to address the particular and the imposition of a Final Rejection at this point in the prosecution will have the effect of prematurely cutting off the applicants in their efforts to, at the very least, have a clear issue developed should appeal be needed.

If the finality of the rejection is not removed, it is requested nevertheless that this Amendment be entered since it is deemed to resolve the Section 112, second paragraph rejection by cancellation of Claims 4 and 12 with the suitable amendment of Claims 7, 8, 13 and 14 in view of such cancellation.

The Section 103 grounds of rejection that are interposed in paragraphs 3-7 on pages 2-4 of the Office Action are each traversed for the reasons that follow:

- While the cited Sicken patent shows applicants' recited component (b), it is utterly devoid of any clear suggestion of selection of component (a) that is recited in the pending Claims: a non-oligomeric, non-halogenated, alkyl-group containing phosphate ester. It contains only one, very vague indication that the Sicken flame retardants can be employed, if desired, "as a mixture with other flameproofing agents" at Col. 4, line 32. This vague statement is merely an invitation to the person of ordinary skill in the art to experiment and does not provide the type of suggestion needed to support either of the

instant rejections<sup>1</sup>. There is no direction as to what type of agent is to be selected from the vast array of possibilities that the person of ordinary skill in the art might identify for possible use!

- The Fearing references are alike in their disclosure, but they too, fail to provide a sufficient basis for either rejection. Like Sicken, they vaguely state that their particular flame retardants can be "... used in combination with other flame retarding agents ...". Again, there is no direction as to what type of agent is to be selected from the vast array of choices that might be presented to the person of ordinary skill in the art!
- The Keppeler citation fails to cure the utter lack of direction that is supplied by any of the primary citations that have just been discussed. It refers, in fact, to selection of a "specific flameproofing combination" at Col. 1, lines 18-19, which is further elucidated at Col. 7, lines 33-36 as containing an isocyanate-reactive liquid component and at least one solid flameproofing agent. Keppeler clearly prefers the selection of aminomethylated phosphonates (see Col. 8, lines 7-11), which are clearly *not* the type of phosphate ester covered in the pending Claims as component (a)<sup>2</sup>.
- Finally, in regard to the rejection of Claims 7, 8, 13, and 14, the Hardy patents, which contain similar disclosure content,

<sup>1</sup> The large number of possible choices shown by Keppeler, for example, at Col. 7, line 33 thorough Col. 8, line 67 illustrates the applicants' point of lack of suitable direction by Sicken.

<sup>2</sup> Col. 8, lines 53-62 of Keppeler list what it characterizes as being "[s]uitable additional flame proofing agents (emphasis added)", clearly implying that they are not intended to replace the selection of the preferred aminomethylated phosphonate species that have been identified by the applicants as being the choice that the

have been cited as additional tertiary art. The applicants deem that neither of these two references would cure the previously discussed deficiencies of the primary and secondary art.

Moreover, the primary citation to Sicken, at Col. 2, lines 12-31, specifically mentions the Hardy '035 patent and mentions its disadvantages at lines 26-31. No person in the art would think of combining any suggests he or she might glean from examination of either of the Hardy patents in view of this clear denigration of that earlier work by Sicken!

Allowance of the pending Claims is requested in view of the amendments and comments contained herein.

Respectfully submitted,

*Richard P. Fennelly*

Richard P. Fennelly  
Attorney for Applicant  
Reg. No. 25,677

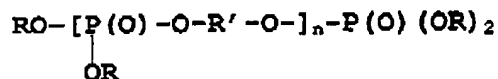
Akzo Nobel Inc.  
7 Livingstone Avenue  
Dobbs Ferry, New York 10522-3408  
(914) 674-5464  
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person of ordinary skill in the art would make if the primary art and Keppeler were to be consulted.

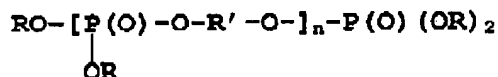
COPY OF AMENDED CLAIMS SHOWING CHANGES

7. A foam as claimed in any of Claims [1-6] 1-3 or 5-6 wherein the oligomeric organophosphorus flame retardant is an oligomeric organophosphate flame retardant in the blend of the formula:



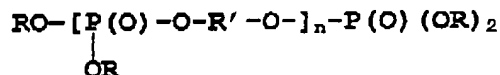
where n, on a number average basis, ranges from 2 to 20, and R is selected from the group consisting of alkyl and hydroxyalkyl, and R' is alkylene.

8. A foam as claimed in any of Claims [1-6] 1-3 or 5-6 wherein the oligomeric organophosphorus flame retardant is an oligomeric organophosphate flame retardant in the blend of the formula:



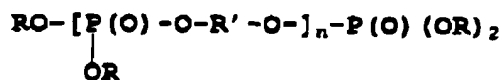
where n, on a number average basis, ranges from 2 to 20, and R and R' are ethyl and ethylene, respectively.

13. A foam as claimed in any of Claims [9-12] 9-11 wherein the oligomeric organophosphorus flame retardant is an oligomeric organophosphate flame retardant in the blend of the formula:



where n, on a number average basis, ranges from 2 to 20, and R is selected from the group consisting of alkyl and hydroxyalkyl, and R' is alkylene.

14. A foam as claimed in any of Claims [9-12] 9-11 wherein the oligomeric organophosphorus flame retardant is an oligomeric organophosphate flame retardant in the blend of the formula:



where n, on a number average basis, ranges from 2 to 20, and R and R' are ethyl and ethylene, respectively.

Claims 4 and 12 have been cancelled.

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